

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JUSTICE MICHAEL HERRON,

Petitioner,

vs.

CASE NO. 05-70806
HON. LAWRENCE P. ZATKOFF

JERI-ANN SHERRY, WARDEN,

Respondent.

ORDER DENYING CERTIFICATE OF APPEALABILITY

This matter is before the Court for a determination as to whether a certificate of appealability should issue in this matter. “In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless” a certificate of appealability is issued under 28 U.S.C. § 2253(c). FED. R. APP. P. 22(b)(1). A certificate of appealability may be issued “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). In order to make such a substantial showing, a petitioner must show that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Court must individually evaluate each issue raised by Petitioner, *see Murphy v. Ohio*, 263 F.3d 466, 467 (6th Cir. 2001), and shall specify the issue or issues upon which Petitioner has made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(3). If the Court declines to issue a certificate of appealability, it must state why it is declining to issue one. *See* FED. R. APP. P. 22(b)(1).

Petitioner requests a certificate of appealability on the following two issues:

- I. There was insufficient evidence to support his conviction.
- II. Petitioner received ineffective assistance of counsel.

The Court has reviewed each issue presented, as well as the supporting materials. For the reasons stated in the Court's December 19, 2005, Opinion and Order, Petitioner's request for a certificate of appealability is DENIED on each issue presented, because Petitioner cannot make a substantial showing of a denial of a constitutional right on any issue. Accordingly, IT IS ORDERED that no certificate of appealability shall issue in this matter.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: January 18, 2006

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on January 18, 2006.

s/Marie E. Verlinde
Case Manager
(810) 984-3290